IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODG.) NO.2881 OF 2004

JVPD Scheme Welfare Trust .. Petitioner.

Vs.

State of Maharashtra ..Respondent.

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Mr. U.B. Nighot for the petitioner.

Mr. R.M. Sawant, Government Pleader for the respondent.

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CORAM : DALVEER BHANDARI, C.J.&
DR.D.Y.CHANDRACHUD, J.

16th December, 2004.

P.C. :

1. A plot of land bearing C.S. No.27(P) admeasuring 5415 sq. mtrs. is situated in the Juhu Vile Parle Development Scheme. Under the final development plan of K-West Ward the plot is reserved as a playground. The plot had remained undeveloped for several years. In purported exercise of powers conferred by Regulation 16 of the Maharashtra Housing and Area Development (Disposal of Land) Regulations 1982, the State Government took a decision to allot the land to the Petitioner on 5th October, 1999.

The State Government thereafter stayed the allotment on 22nd February, 2000, after which fresh directions were issued on 18th October, 2003 for the allotment of the plot subject to several terms and conditions. Pursuant thereto, Mumbai Housing and Area Development Board communicated the decision of the State Government on 16th February, 2004. The decision of the State Government was subject to several terms and conditions including (i) the eligibility of the Petitioner; (ii) the provisions of the Development Control Regulations; (iii) the terms and conditions that may be imposed by the Municipal Corporation and the Housing Board; (iv) the policy of the authority in regard to the payment of costs and (v) the use of the ground for public purpose. The allotment has been cancelled which has resulted in the filing of these proceedings under article 226.

2. In the affidavit in reply, which has been filed on behalf of the Mumbai Housing and Area Development Board, it has been stated that allotments made under Regulation 16 by the State Government were challenged in Writ Petitions 2506 of 2003 and 75 of 2004 in which this Court had passed interim orders staying those allotments made in pursuance of the directions issued by the State Government under Regulation 16. As a consequence, no further

steps were taken in the matter of allotment to the Petitioner. In view of the resulting impasse in the development of the plot as a playground, the First Respondent has taken a decision to itself develop the plot in question. Anchor Foundation is running a public school in the near vicinity and a considered decision was taken on the application of the said foundation to grant a licence for the development and beautification of the playground. In the reply, it has been stated that the Anchor Foundation would develop the playground and keep it open for the public as well as for the school children receiving education in the schools situated in the vicinity. The development of the playground would also be achieved without any financial investment on the part of the First Respondent. Accordingly in pursuance of a resolution passed by the Maharashtra Housing and Area Development Authority on 20th February, 2003, a licence for a period of three yeas has been granted to the aforesaid foundation which is limited for carrying on the development and beautification of the plot in question. In so far as the Petitioner is concerned, it has been stated in the affidavit in reply that though the Trust calls itself "the JVPD Welfare Trust" and purportedly clams to work for the benefit of the residents of the area, none of the Trustees are residents of the JVPD Scheme, but were found to be residents of other areas including Navi Mumbai.

The financial capacity of the Petitioner it has been stated is not clear.

3. In our view, the decision of the First Respondent not to allot the plot to the Petitioner but to assume the responsibility to itself provide the amenity to the members of the public cannot be faulted. The plot in question is reserved as a playground under the final development plan. The credentials of the Petitioner are far from being established. The decision to grant a licence to an entity which is conducting a public school in the vicinity subject to the condition that the land would be developed and beautified in order to facilitate its use as a playground by the members of the public cannot be faulted. In fact, the beautification of the land in question would enure to the benefit of the public. We are not satisfied with the credentials or the track record of the Petitioner. At the highest, the claim of the Petitioner is the receipt of an undeserved and arbitrary, largesse from the State Government which in our view has been correctly rescinded. Reservations of land for public

purpose are intended to subserve the interest of the public. The exercise of an unchannelized power of the State to confer largesse in purported exercise of Regulation 16 would be an anathema to a Constitutional system in which the conferment of all benefits by the State is required to meet the touchstone of article 14. For the purpose of this Petition, we need not delve any further into the matter, since we are satisfied that the decision of the authorities to rescind the allotment cannot be faulted and is in fact in the public interest. We find no merit in the petition which is accordingly dismissed.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD, J.